

# ARTIFICIAL INTELLIGENCE AND VEHICLE FINANCE

Vehicle finance members of AFSA are increasingly concerned about the proliferation of state legislation focused on Artificial Intelligence (AI) and its potential for unintended consequences that would affect the provision of safe, affordable vehicle finance to qualifying consumers.

States' approaches to the regulation of AI vary greatly. Because of a lack of consistent understanding of AI and machine learning, many of these go well beyond AI and machine learning to affect non-AI models used by vehicle finance providers for underwriting, the extension of credit, and other consumer-focused activities.

AFSA questions the need for complex and far-reaching new laws and regulations at the state level, before the form and nature of federal AI laws become clearer.

## I. KEY MESSAGES

State AI laws could create challenges in many areas of vehicle finance, from credit decisioning through to customer service, creating a significant additional compliance burden, raising the risk of litigation and reputational damage for providers, ultimately affecting the cost and availability of credit.

- State AI laws could negatively affect credit decisioning and other automated models used by vehicle finance companies, limiting the amount of credit available for purchasing vehicles and raising its cost.
- Many state AI bills contain definitions that are too broad and ignore the need to focus on Generative AI—which is widely available and considered to have the most applications for consumer-focused businesses.
- Consumers are already protected from the perceived harms of AI by a comprehensive raft of laws and regulations.
- State AI laws would increase compliance costs for vehicle finance providers, which already comply with multiple layers of existing consumer protection laws and regulations.
- State AI laws would increase litigation and reputational risk for vehicle finance providers without providing significant additional consumer protections.
- State AI laws risk stifling innovation in a competitive market for vehicle finance.
- State AI laws may grant differing consumer rights, creating unnecessary operational challenges for providers of vehicle finance.
- AFSA believes that a better alternative to state AI laws lies in a carefully developed federal-level AI framework.

## II. TALKING POINTS

State AI laws could negatively affect credit decisioning and other automated models used by vehicle finance companies, limiting the amount of credit available for purchasing vehicles and raising its cost.

- Definitions from outside of credit regulation may be intentionally broad to ensure that, for instance, the military and intelligence services are well positioned for an uncertain future as it develops. Regulating existing, unrelated systems with a similarly broad definitions risks unintended consequences.
- Overly broad definitions of AI models or systems will limit the incorporation of AI in traditional credit scoring models and disrupt existing models, forcing companies to overhaul or abandon processes that have proven fair and effective for decades.
- Many vehicle finance providers use AI-driven automated systems to streamline customer service. New AI laws could place restrictions on this automation, resulting in slower response times, higher operational costs, and diminished consumer satisfaction.
- AI discussions, in general, lack a common mutual understanding of the boundaries of the term (AI). Policymakers are respectfully encouraged to consider whether their state's definition could be interpreted to cover, say, an alarm clock or pocket calculator.

Many state AI bills contain definitions that are too broad and ignore the need to focus on Generative AI—which is widely available and considered to have the most applications for consumer-focused businesses.

- Algorithmic models have been relied upon to support business decisions for decades. While some forms of AI are new, legislation should be carefully crafted to narrowly define AI so that it does not impede existing well-established modeling.
  - Utah Senate Bill 149, for example, does focus on Generative AI, limiting the scope of its AI consumer protection law by defining AI in one context as: (a) "Generative artificial intelligence" means an artificial system that: (i) is trained on data; (ii) interacts with a person using text, audio, or visual communication; and (iii) generates non-scripted outputs similar to outputs created by a human, with limited or no human oversight. This definition is tailored so that it avoids inadvertently regulating non-generative mathematical models that have been in place for years to assist businesses predict outcomes.
  - By contrast, the definition used in Colorado Senate Bill 24-205 will impose extensive resource- and labor-intensive requirements on businesses that use so-called "high-risk artificial intelligence systems."
    - Despite the sense of severity conveyed by that term, in reality it is broadly defined to include AI that makes a decision (or even a recommendation that is a substantial factor in a decision) about the terms or availability of financial or lending services.

- Critically, the term does *not* distinguish between Generative and non-Generative AI. Further, the requirements it imposes, which although well-intentioned in that they seek to prevent algorithmic bias by the AI system, are unnecessary because of existing anti-discrimination laws and rules that already apply to the provision of financial or lending services.

Consumers are already protected from the perceived harms of AI by a comprehensive raft of laws and regulations.

- Financial institutions already live under myriad laws and regulations that prevent discrimination, including the Equal Credit Opportunity Act and the Fair Credit Reporting Act.
- A joint statement on AI issued by the Civil Rights Division of the United States Department of Justice, the Consumer Financial Protection Bureau, the Federal Trade Commission, and the U.S. Equal Employment Opportunity Commission states that “existing legal authorities apply to the use of automated systems and innovative new technologies just as they apply to other practices.” Therefore, federal laws that regulate civil rights, non-discrimination, fair competition, consumer protection, and other vitally important legal protections will still apply to the use of AI.

State AI laws would increase compliance costs for vehicle finance providers, which already comply with multiple layers of existing consumer protection laws and regulations.

- As more states introduce their own AI bills, vehicle finance providers face the burden of navigating a patchwork of regulations. Each state may have different requirements for AI usage, particularly in credit decisioning, leading to skyrocketing compliance costs.
- The vehicle finance marketplace is very competitive. Smaller vehicle finance providers who lack the resources to ensure compliance could fall behind competitors who are better able to navigate or mitigate myriad legal restrictions, reducing competition and driving market consolidation, potentially harming consumers through fewer choices and higher prices.

State AI laws would increase litigation- and reputational-risk for vehicle finance providers without providing significant additional consumer protections.

- Vehicle finance providers would face increased litigation risk if AI systems used in credit decisions or customer interactions are deemed non-compliant with state laws, especially if consumer harm is alleged.
- Consumer allegations of discriminatory AI practices, even if unfounded, can result in significant unwarranted reputational harm.
- States should not grant consumers a private right of action to preclude frivolous or nuisance-style customer litigation and should instead limit enforcement and regulation to government authorities which are in the best position to assess complexities and market standards.

State AI laws risk stifling innovation in a competitive market for vehicle finance.

- Over-regulation would stifle AI innovations that could streamline operations, reduce costs, and improve consumer experiences. AI laws that are broadly drafted to encapsulate any potential automated technology will chill the progress of AI adoption, which may result in increased consumer costs.
- Legal uncertainties around AI may force providers to rework existing contracts with AI vendors, which could delay the adoption of new technologies that improve operational efficiency and consumer experiences.

State AI laws may grant differing consumer rights, creating unnecessary operational challenges for providers of vehicle finance.

- State legislators have not settled on a uniform set of rights that consumers should have regarding the use of AI in decision-making.
- Varying requirements on notice, choice, access to information about the decision-making process, and the ability to contest automated decisions create significant operational challenges where such rights are not uniform.
- Ensuring consistent rights nationwide is operationally critical.

AFSA believes that a better alternative to state AI laws lies in a carefully developed federal-level AI framework.

- While AFSA shares states' desires to protect against bias in credit decisioning, this area is already being comprehensively addressed at the federal level.
- State laws that seek to protect consumers from algorithmic bias would create unnecessary dual regulatory regimes for auto finance companies.
- A federal framework would avoid the operational complexities of complying with disparate state laws and provide a consistent legal environment that would maintain innovation while still protecting consumers.